

**Town of Kinderhook
Zoning Board of Appeals
November 1, 2012**

Minutes

Approved

The Meeting of the Town of Kinderhook Zoning Board of Appeals was held on Thursday, November 1, 2012 beginning at 7:10pm at the Kinderhook Town Hall, 4 Church Street, Niverville, NY with Chairman Thomas Puchner presiding. The meeting was called to order by the Chairman and the Roll was taken by the Secretary.

1. Call Roll

Present:

Thomas Puchner, Chairman
Andy Howard, Attorney
Steven Hotaling
John McManus
Nataly Dee, Secretary

Excused:

Keith St. John
Jeff Ouellette

Absent:

None

B. Correspondence

1. Review of outstanding Minutes:
March 1, 2012
September 27, 2012

Unfortunately, the minutes from the March meeting cannot be approved. Mr. Puchner was excused from the meeting. Mr. Hotaling had not yet been appointed to the Board. Corrections were made to the March minutes.

A motion to approve the minutes from the September Meeting with corrections was made by Mr. Puchner. Motion seconded by Mr. Hotaling. All in favor by show of hands. Motion carried; minutes approved.

The resolution regarding the Kinderhook Prospects, Inc. appeal was read by Mr. Howard:

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TOWN OF KINDERHOOK
ZONING BOARD OF APPEALS

APPLICANT: KINDERHOOK PROSPECTS, INC.

RESOLUTION
NOVEMBER 1, 2012

WHEREAS, an appeal was taken by Kinderhook Prospects, Inc. to the the Town of Kinderhook Zoning Board of Appeals from a Notice of Violation issued by the Town of Kinderhook Code Enforcement Officer that the operation of a window for ice cream and food sales from the restaurant/tavern known as the Niverville Pub and repairs to an existing porch at the subject premises required site plan approval; and

WHEREAS, Kinderhook Prospects, Inc. contended that the operation of a window for ice cream and food sales was the continuation of a pre-existing use at the subject premises; and

WHEREAS, Kinderhook Prospects, Inc. further contended that the repairs to an existing porch at the subject premises constituted maintenance of an existing structure and not the construction of a new structure requiring site plan approval from the Planning Board; and

WHEREAS, the Town of Kinderhook Zoning Board of Appeals held a public hearing on September 27, 2012, at which point it took testimony from Kinderhook Prospects, Inc. and members of the public; and

WHEREAS, at the public hearing, testimony was offered from members of the public, including but not limited to, an individual by the name of George Newkirk, who testified that the food service window had been in service at the Niverville Pub for decades and that the porch at the subject premises was an existing structure that was repaired and maintained; and

WHEREAS, no member of the public offered testimony in opposition to the subject appeal or offered testimony that said food service window has not been in long standing usage or that the porch at the subject premises was not an existing structure that had been repaired and maintained rather than being newly constructed; and

WHEREAS, at the conclusion of the Public Hearing the Town of Kinderhook Zoning Board of Appeals duly deliberated upon the appeal of Kinderhook Prospects, Inc.; and

WHEREAS, after said deliberation, a motion was made by Mr. St. John, seconded by

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Mr. Puchner, to vacate the Notice of Violation issued to Kinderhook Prospects, Inc. and find that that the service of ice cream and food from the service window at the subject premises did not constitute a change in use of the existing structure and that the repairs made to the porch of the structure in question were in accordance with Article 250-50 of the Code of the Town of Kinderhook; and

WHEREAS, the members of the Town of Kinderhook Zoning Board of Appeals unanimously voted in favor of said motion to vacate the Notice of Violation and directed the preparation of a formal resolution relative to same; and

WHEREAS, this meeting has been duly noticed and convened;

NOW, THEREFORE, BE IT RESOLVED

THAT, the Notice of Violation issued by the Town of Kinderhook Code Enforcement Officer to Kinderhook Prospects, Inc., is hereby vacated; and

THAT, it is hereby the determination of the Town of Kinderhook Zoning Board of Appeals that the service of ice cream and food from the service window at the Niverville Pub is the continuation of a prior lawful use at said premises that does not require site plan approval from the Planning Board; and

THAT, the repairs made to the porch of the structure in question were in accordance with Article 250-50 of the Code of the Town of Kinderhook; pursuant section 81-47 of the Town of Kinderhook Zoning Code,

Resolution moved by: Puchner

Seconded by: McManus

VOTE

AYE

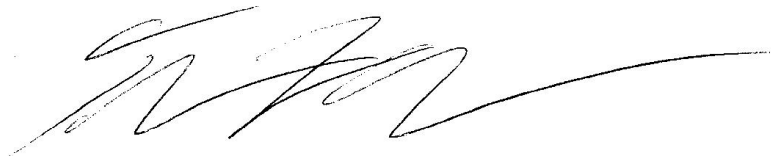
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NAY

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ABSTAIN

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A Motion to adopt the resolution regarding the Kinderhook Prospects, Inc. appeal was made by Mr. Puchner. Motion seconded by Mr. McManus. All in favor by show of hands. Motion carries; resolution approved.

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The resolution regarding John Murray's appeal was read by Mr. Howard:

TOWN OF KINDERHOOK
ZONING BOARD OF APPEALS

APPLICANT: JOHN MURRAY

RESOLUTION
NOVEMBER 1, 2012

WHEREAS, an appeal was taken by John Murray to the the Town of Kinderhook Zoning Board of Appeals from the denial of a building permit application by the Town of Kinderhook Code Enforcement Officer that Mr. Murray's proposed construction of a barn with a half bathroom and limited kitchen facilities for entertaining constituted an accessory apartment requiring site plan approval from the Planning Board pursuant to section 250-30 of the Kinderhook Town Code; and

WHEREAS, John Murray contended that the re-location of a barn to his residential property and the rehabilitation, renovation and finish construction of said barn into habitable space for use as a space for entertaining and recreation was an accessory structure permitted as of right pursuant to the Town of Kinderhook Code; and

WHEREAS, the Town of Kinderhook Zoning Board of Appeals held a public hearing on September 27, 2012, at which point it took testimony from Mr. Murray and and members of the public; and

WHEREAS, at the public hearing, Mr. Murray explained the plans for his structure to the Zoning Board of Appeals and testified that while the structure would be heated, would have a separate septic system, and would have a half-bath and limited kitchen facilities for the sole use of entertaining, the structure would not be utilized as an apartment; and

WHEREAS, Mr. Murray further testified that the strucure would not be utilized to house people on a permanent or semi-permanent basis, but rather was a space that was being constructed as an accessory structure to his primary residence, said use to be entertaining, recreation, and the storage of equipment; and

WHEREAS, at the conclusion of the Public Hearing the Town of Kinderhook Zoning Board of Appeals duly deliberated upon the appeal of Mr. Murray; and

WHEREAS, after said deliberation, a motion was made by Mr. McManus, seconded by Mr. Puchner, to grant the applicant's appeal and remand the matter back to the Building Department for consideration as an application for a Building Permit for an Accessory Structure, with the provision that a full and final set of plans including the septic system will be submitted to the Building Department for review and approval in accordance with the Building Code; and

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WHEREAS, the members of the Town of Kinderhook Zoning Board of Appeals unanimously voted in favor of said motion to grant the applicant's appeal and remand the matter back to the Building Department for consideration as an application for a Building Permit for an Accessory Structure, with the provision that a full and final set of plans including the septic system will be submitted to the Building Department for review and approval in accordance with the Building Code; and

WHEREAS, the Zoning Board of Appeals further directed the preparation of a formal resolution relative to same; and

WHEREAS, this meeting has been duly noticed and convened;

NOW, THEREFORE, BE IT RESOLVED

THAT, the appeal is hereby granted and the denial of Mr. Murray's building permit application is hereby vacated; and

THAT, it is hereby the determination of the Town of Kinderhook Zoning Board of Appeals that the plans of John Murray for the rehabilitation, renovation and construction of the subject barn for recreation, entertaining and storage does not constitute an accessory apartment requiring site plan approval under section 250-30 the Town of Kinderhook Zoning Code, but is rather an accessory building to a residence permitted under the Kinderhook Zoning Code; and

THAT, pursuant to the foregoing, the matter is remanded back to the Building Department for consideration as an application for a Building Permit for an Accessory Building, with the provision that a full and final set of plans including the septic system will be submitted to the Building Department for review and approval in accordance with the Building Code,

Resolution moved by: Puchner

Seconded by: Hotaling

VOTE

AYE

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NAY

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ABSTAIN

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A Motion to adopt the resolution regarding John Murray's appeal was made by Mr. Puchner. Motion seconded by Mr. Hotaling. All in favor by show of hands. Motion carries; resolution approved.

Vouchers for member reimbursement were distributed. Mr. Puchner noted that his term expires at the end of this year.

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A Motion to adjourn was made by Mr. Puchner. Motion seconded by Mr. McManus. All in favor. Motion carried; meeting adjourned at 7:20pm.

Respectfully submitted,

Nataly Dee, Secretary